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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/064,264

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Jason A. Gordon

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EXAMINER

JABR, FADEY S

ART UNIT

PAPER NUMBER

3628

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/064,264	GORDON, JASON A.	
	<b>Examiner</b>	<b>Art Unit</b>	
	FADEY S. JABR	3628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 January 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 16, 17 and 20-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16, 17 and 20-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 14 October 2008 has been entered.

### ***Status of Claims***

Claims **18-19** have been cancelled. Claims **16** and **20** have been amended. Claims **21-34** have been newly added. Claims **16-17** and **20-34** are pending and are presented for examination.

### ***Response to Arguments***

2. Applicant's amendments filed 14 January 2009 with respect to 35 U.S.C. 101 have been fully considered and are therefore withdrawn.

3. Applicant's arguments with respect to claims **16** have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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5. Claims **27-34** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As per **Claims 27-34**, the recitation, A system...comprising: a processor....to perform:, is vague and indefinite. It is unclear to the Office whether the limitations occurring after comprising are intended to be part of the preamble. Therefore, it is unclear whether the limitations following, perform:, are method steps or steps corresponding to logic steps being executed. Clarification is asked in the matter. Appropriate correction is required in the indicated claims and any subsequent claims.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims **16, 23-27** and **32-33** are rejected under 35 U.S.C. 103(a) as being unpatentable over Hunt et al., U.S. Patent No. 5,835,716 in view of Bains et al., Pub. No. US/20040093313 A1 and Kende et al., Pub. No. US2002/0120540 A1, hereinafter referred to as Hunt, Bains and Kende, respectively.

As per **Claims 16 and 27**, Hunt discloses a method and system comprising:

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- determining capacity in the carrier system at a designated time period by using the computer to process capacity data (C. 2, lines 35-44, C. 3, lines 8-16);
- obtaining customer usage and customer data using the computer (C. 3, lines 8-22);
- identifying the at least one customer to receive the dynamic pricing using the computer (C. 2, lines 35-44);
- when the capacity of the carrier system is underutilized during the designated time period, offering decreased pricing to the at least one customer to use the carrier system during the designated time period by using the computer to update a rate database maintained by the carrier system for the customer and reserving capacity in the carrier system for the at least one customer using the computer (C. 2, lines 35-44, C. 3, lines 8-16, C. 4, lines 11-20, C. 6, lines 53-61).

Hunt fails to *explicitly* disclose when the capacity of the carrier system is over utilized, offering increased pricing to the at least one customer to use the carrier system during the designated time period by using the computer to update a rate database maintained by the carrier system for the customer. However, Hunt discloses carriers can offer the space at a discount or at no-charge space...The latter could be reserved for special customers who achieve certain efficiencies...(C. 2, lines 35-44). Further, Bains teaches container freight rates, in the US import/export trade are highly cyclical due to the participation of foreign flag carriers with lower operating costs who are constantly setting rates, negotiating volume discounts, changing rates of container shipping space based on availability, changing rates of shipping container space often based on commodity. For example, when carriers have shortage of container space and equipment they routinely increase freight rates. Similarly they routinely lower rates when they have surplus equipment in one

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region of the world to reposition their container equipment; this process is routinely used to tackle container imbalance and is the container carriers' form of yield management (0004).

It would have been obvious to one of ordinary skill in the art at the time of the invention to include increasing rates based on availability as taught by Bains in the system of Hunt, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Hunt fails to disclose obtaining dynamic pricing related usage data using the computer, analyzing the dynamic pricing..., determining effectivity of the dynamic pricing..., determining whether to modify..., and modifying the dynamic pricing... However, Kende teaches rates may be updated at the occurrence of an identified triggering event (0057-0061). Further, Kende teaches an analysis engine which determines one or more preferred rate plans based on one or more prior usage information (0063-0073). Moreover, Kende teaches a switching module which can inform whether their rate plan is the most advantageous (0082-0083).

It would have been obvious to one of ordinary skill in the art at the time of the invention to include an automatic analysis and rate information system as taught by Kende in the system of Kende, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

As per **Claims 23 and 31**, Hunt fails to *explicitly* disclose reserving capacity in the carrier system requires the customer to use the carrier system by a predetermined time. However, Hunt discloses the latter could be reserved for special customers who achieve certain efficiencies during a qualifying period (C. 2, lines 35-44). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method and system of Hunt and include a qualifying period, because it allows a time period for special customers to achieve certain efficiencies to receive the promotional discount.

As per **Claims 24 and 32**, Hunt discloses reserving capacity in the carrier system includes offering the at least one customer a binding reservation of capacity (C. 3, lines 24-37).

As per **Claims 25 and 33**, Hunt fails to *explicitly* disclose the decreased pricing requires the customer to use a predetermined intake station of the carrier system. Hunt does disclose offering a discount for customers who achieve certain efficiencies (C. 2, lines 34-44). Further, Bains teaches carriers routinely lower rates when they have surplus equipment in one region of the world to reposition their container equipment; this process is routinely used to tackle container imbalance and is the container carriers' form of yield management (0004).

It would have been obvious to one of ordinary skill in the art at the time of the invention to include lowering price to tackle container imbalance as taught by Bains in the system of Hunt, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of

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ordinary skill in the art would have recognized that the results of the combination were predictable.

As per **Claims 26 and 34**, Hunt fails to *explicitly* disclose the capacity of the carrier system is further determined by considering a mandatory capacity level of the carrier system. However, Hunt discloses notifying shippers that a carrier has excess capacity. In order to interest shippers in utilizing the available space...(C. 2, lines 34-44). Thus, Hunt teaches that utilizing the extra capacity in order to fully utilize the container space. Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method and system of Hunt and include determining the amount of space required to fill the container, because it allows the carrier to more efficiently utilize the container space.

8. Claim **17** is rejected under 35 U.S.C. 103(a) as being unpatentable over Hunt in view of Bains and Kende as applied to claim 16 above, and further in view of Barns-Slavin et al., U.S. Patent No. 5,995,950, hereinafter referred to as Barns-Slavin.

As per **Claim 17**, Hunt fails to disclose the customer usage data is obtained from a mailing machine. However, Barns-Slavin teaches the discounts maybe allowed only after a certain cumulative dollar amount, number of pieces, or weight have been shipped using a particularly class of service (C. 2, lines 7-10, also see Figure 1).

Since each individual element and its function are shown in the prior art, albeit shown in separate references, the difference between the claimed subject matter and the prior art rests not on any individual element or function but in the very combination itself. That is in the



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substitution of a mailing machine of Barns-Slavin for the computer of Hunt. Thus, the simple substitution of one known element for another producing a predictable result renders the claim obvious.

9. Claims **20, 22, 28** and **30** are rejected under 35 U.S.C. 103(a) as being unpatentable over Hunt in view of Bains and Kende as applied to claims 16 and 27 above, and further in view of Gliozzi et al., Pub. No. US2003/0065542 A1, hereinafter referred to as Gliozzi.

As per **Claims 20 and 28**, Hunt teaches determining the capacity in the carrier system includes, analyzing real-time usage data of the carrier system (C. 2, lines 34-44, C. 3, lines 8-22). Hunt fails to disclose historical data, analyzing partial period usage data, and forecasting capacity demands. However, Kende teaches the use of rate information may be based on one or more of historical and other user specific usage information and preferences, current rate information for one or more services as well as other information. Moreover, Gliozzi teaches all yield management systems use a forecast method to estimate the requests of the different categories (0003).

It would have been obvious to one of ordinary skill in the art at the time of the invention to include different variables when determining capacity and costs as taught by Kende and Gliozzi in the system of Hunt, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

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As per **Claims 22 and 30**, Hunt fails to disclose oversubscribing the carrier system. However, Gliozzi teaches a resolution of the freights or a unit load device used for transporting the freights are considered (for example by reducing the residual capacity of a pre-set coefficient), no-show freights and/or denied boarding (off-loaded) freights are estimated, an overbooking is taken into account (for example increasing the offered capacity by a pre-set coefficient), or no by-product is calculated (0099). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method and system of Hunt and include overbooking capacity as taught by Gliozzi, because it allows the carrier system to reserve all excess capacity in order guarantee full capacity.

10. Claims **21** and **29** are rejected under 35 U.S.C. 103(a) as being unpatentable over Hunt in view of Bains and Kende as applied to claims 16 and 27 above, and further in view of Damji, Pub. No. US2003/0200111 A1, hereinafter referred to as Damji.

As per **Claims 21 and 29**, Hunt fails to disclose determining the capacity in the carrier system includes considering labor costs of the carrier system. However, Damji teaches once a freight charge is determined for each transport load option, it is combined with the labor and material costs for that particular configuration or option (0102). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method and system of Hunt and include determining labor costs when determining freight costs as taught by Damji, because it allows the system to determine all variable costs when determining the total cost of a freight option.

***Conclusion***

Examiner's Note: Examiner has cited particular columns and line numbers in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that the applicant, in preparing the responses, fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FADEY S. JABR whose telephone number is (571)272-1516. The examiner can normally be reached on Mon. - Fri. 8:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on (571) 272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Fadey S Jabr  
Examiner  
Art Unit 3628

FSJ

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Hand delivered responses should be brought to the Customer Service Window, Randolph Building, 401 Dulany Street, Alexandria, VA 22314

/John W Hayes/  
Supervisory Patent Examiner, Art Unit 3628